

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOSEPH W. BUECHEL,)
Plaintiff,)
v.) Civil No. 08-cv-132-JPG-CJP
UNITED STATES OF AMERICA, et al.,)
Defendants.)

MEMORANDUM AND ORDER

I. Report and Recommendation

This matter comes before the Court on the Report and Recommendation (“Report”) (Doc. 54) of Magistrate Judge Clifford J. Proud recommending that the Court dismiss or deny the government’s motion to dismiss (Doc. 33) plaintiff Joseph W. Buechel’s case.

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjested portions for clear error.” *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The Court has received no objection to the Report. The Court has reviewed the entire file and finds that the Report is not clearly erroneous. Accordingly, the Court hereby **ADOPTS** the Report in its entirety (Doc. 54) and **DISMISSES** the government's motion to dismiss (Doc. 33) as an impermissible successive Rule 12 motion. *See* Fed. R. Civ. P. 12(g)(2).

II. Amended Complaint

The Court also addresses a case management issue. On July 21, 2009, the Court dismissed Count 2, a medical malpractice claim, without prejudice with leave to file an amended complaint adequately pleading Count 2 (Doc. 32). At that time, the Court warned Buechel that if he failed to amend his pleading to adequately plead Count 2, the Court would dismiss Count 2 with prejudice. Buechel requested several extensions of time to amend his pleading, and the Court eventually set a deadline of February 11, 2010 (Doc. 47). Buechel, now represented by counsel, has not filed an amended pleading. Therefore, as the Court warned it would do in its July 21, 2009, order and for the reasons stated in that order, the Court **DISMISSES** Count 2, Buechel's medical malpractice, **with prejudice** and **DIRECTS** the Clerk of Court to enter judgment accordingly at the close of the case.

IT IS SO ORDERED.

DATED: March 11, 2010

s/ J. Phil Gilbert
J. PHIL GILBERT
U. S. DISTRICT JUDGE